

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7443 of 2018

1. Lal Bahadur Sah Son of Ram Chandra Sah,
2. Rudal Sah, Son of Indrasan San,

Both are residents of Village- Dhankhariya, P.S.- Harsidhi, District- East Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Land Reforms and Revenue, Govt. of Bihar.
2. The Collector cum District Magistrate, East Champaran, at Motihari.
3. The Sub-Divisional Officer, Areraj, District- East Champaran.
4. The Circle Officer, Harsidhi, District- East Champaran.
5. The Officer In-charge, Harsidhi Police Station, District- East Champaran.
6. Sugauli Sugar Corporation through its Manager, P.S.- Sugauli, District- East Champaran.
7. Mostt Jugeshwari Devi, Wife of Mahadeo Sahni, Resident of Village- Panapur, P.S.- Harsidhi, District- East Champaran.
8. Mostt. Sheorajja Devi, Wife of Bigu Sah, Resident of Village- Panapur, P.S.- Harsidhi, District- East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajesh Ranjan, Advocate
		Mr. Shakti Suman Kumar, Advocate
For the Respondent/s	:	Mr. Sajid Salim Khan- SC25

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 05-09-2024

Heard Mr. Rajesh Ranjan, learned Advocate for the petitioner and Mr. Sajid Salim Khan, learned Advocate for the State.

2. The petitioner by invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India seeks a direction upon the respondent no. 2 to exclude



RS Plot No. 354 area admeasuring 0.56 acres and RS Plot No. 449 area 0.52 acres, both under Khata No. 27 of village Dhankharaiya P.S. and Anchal Harsidhi, District East Champaran from the category of surplus land of respondent no. 6.

3. Shorn of unnecessary details, the learned Advocate for the petitioner contended that RS Plot Nos. 354 and 449 appertaining to Khata No. 27 origianlly belonged to one Jhapsi Turha, whose name was recorded in the RS khatian as raiyat of the land. Since Jhapsi Turha died issueless, his nephew Saheb Turha came in possession of the land in question and his name was substituted in record No. 187200/40-41 dated 29.10.41. Saheb Turha died issueless and thus his sister's son namely Suryadeo Sah inherited the land along with other lands left behind by his maternal uncle Saheb Turha. Accordingly jamabandi was created in his name. The father of the petitioner no. 2 acquired two katha and 17 dhurs out of Plot No. 449 and RS Plot No. 445 by virtue of registered sale deed dated 06.12.77 and since then he has been coming in possession over the land. Similarly the father of the petitioner no. 1 namely Ramchandra Sah also acquired land measuring 5 kathas in Plot No. 449 through a registered sale deed dated 06.12.1977. The name of



the father of the petitioners have got mutated in the records of the State of Bihar and they paid the rent.

4. While the petitioners were coming in peaceful possession over the land, in question, in the meantime, ceiling proceeding bearing No. 2/73-74/32/82-83 was initiated against the respondent no. 6. During the course of which, the then Manager of Sugauli Sugam Mill voluntarily surrendered certain lands including the aforesaid RS Plot No. 354 and 449 over which the respondent no. 6 had no right, title or possession. Having learnt about the mischief committed by the Sugar Mill, Suryadeo Sah, who inherited the land in question from his maternal uncle filed a petition before the respondent no. 4 for exclusion of his land on the basis of which ceiling case No. 21(ka) of 76-77 was initiated and decided in his favour holding that the plots in question do not belong to respondent no. 6 and he had no right to surrender the same. Father of the petitioners had absolutely no knowledge about the ceiling proceeding and also no notice was ever issued to them at any stage of proceeding. The respondent nos. 7 and 8 had full knowledge that the father of the petitioners were purchaser of the land in question. Despite the aforesaid fact, the respondent nos. 7 and 8 filed a petition before the respondent no. 3 without impleading



them as party. In the aforesaid premise, without any notice or holding any enquiry, an order dated 05.08.1977 came to be passed directing for delivery of possession in favour of respondent nos. 7 and 8. This order was put to challenge by the father of the petitioners before this Court in CWJC No. 7181 of 1991 which stood disposed of vide order dated 25.11.1991 directing them to move before the Collector under Section 45(B) of the Act. The Hon'ble Court while disposing of the writ petition also protected possession of the writ petitioner for a period of one month so that the petitioners may approach before the Collector and seek interim relief. In the light of the order of the Hon'ble Court, the father of the petitioners moved before the respondent no. 4 for reopening under Section 45(B) of the Ceiling Act and for exclusion of their lands from the ceiling proceeding which gave rise to Revenue Misc. Case No. 49/1991-92. The respondent no. 2 vide order dated 11.05.1992 refused to reopen the case under Section 45(B) of the Ceiling Act and pass order for distribution of the land amongst the purcha holders and further directed for cancellation of the jamabandi of the said writ petitioners.

5. Against the order aforenoted, the father of the petitioner no.2 along with others preferred CWJC No. 4686 of



1992 which came to be disposed of vide order dated 11.08.1992 by quashing the order of the Collector dated 11.05.1992 and the matter was remanded back to the respondent no. 2 for fresh disposal of the ceiling proceeding in accordance with law. The respondents were directed to maintain *status quo* during the pendency of the matter. On account of the matter being remanded, the case again continued but unfortunately for the next 20 years it was kept pending and in the meantime on account of serious ailments the father of the petitioners, entrusted the *pairvi* of the case to *parvikar* who failed to make *pairvi* and vide order dated 01.11.2014, Revenue Misc. Case No. 49/91-92 stood dismissed for default. The petitioners being the legal heirs immediately filed restoration petition on 17.11.2014 which was kept pending for another two years but finally it was dismissed with an observation that there was no justification of the restoration of the case after inordinate delay. The petitioners being aggrieved moved before the Bihar Land Tribunal. However, the petition filed by the petitioners was returned by the Registry of the Tribunal on the ground that Section 45(B) has already been repealed by the amendment dated 01.09.2016 by incorporating Section 45(D) and thus any proceeding pending before the State Government or the Bihar



Land Tribunal shall be deemed to be abated.

6. Adverting to the aforesaid facts, learned Advocate for the petitioners submits that petitioner no. 1 herein is the son of Ram Chandra Sah who was petitioner no. 1 in the Revenue Miscellaneous Case No. 49/91-92. After the death of Ram Chandra Sah, the petitioner no. 1 represented his estates and the petitioner no. 2 is the son of Indrasan Sah and he was the petitioner in CWJC No. 4686 of 1992. The petitioners and their fathers in the aforementioned case have been continuously attending the proceeding for the last 20 years during which period the Collector did not proceed in the matter and all of a sudden after 20 years dismissed the Revenue Misc. Case No. 49/91-92 on account of non-prosecution. Restoration application was filed only after 16 days from the date of dismissal, the same was also kept pending more than two years but without considering the averments made therein that there was no fault on the part of the petitioner the same stood dismissed. Having left with no option on account of repealment of Section 45B, the petitioner invoked the jurisdiction of this Court that the person cannot be left remediless. In order to buttress his submission, learned Advocate for the petitioners also placed reliance on a judgment/ order of this Court passed in the case of ***Rajani Kant Singh vs.***



The State of Bihar and others in CWJC No. 5564 of 2018.

7. On the other hand, learned Advocate for the State submitted that since the prescription for reopening of the ceiling proceeding as prescribed under Section 45(B) stands repealed, thus all the cases or proceeding pending before any court under Section 45(B) shall also stands abated.

8. This Court has heard learned Advocate for the petitioners as well as the State and also considered the facts under which the petitioners have approached this Court. While considering the identical issue, as has been raised in the present writ petition, this Court has taken note of the prescription as provided under the Amendment Act, 2019 whereby apart from Section 16(3), 45(B) were repealed and a new provision, Section 45(D) was added. For proper appreciation, it would be apposite to quote paragraph nos. 17 to 21 of the judgment passed in ***Rajani Kant Singh (supra)***.

*“17. The constitutional validity of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Amendment Act, 2016 as also Amendment Act, 2019, whereby, apart from Section 16 (3), Section 45 (B) were repealed and a new provision Section 45 (D) was added, was duly considered by the learned Division Bench of this Court in **CWJC No. 15060 of 2019** and other analogous cases captioned as **Sudhakar Jha Vs. The State of Bihar and Ors., 2024 (3) PLJR 409**. The learned Division Bench*



while holding the constitutional validity of the aforesaid Amendment Act has taken note of the fact that the provisions of Section 45 (B) was repealed and at the same time, Section 4 (I)(ii) and (iii) were added to Section 30. Section 30(4) (i) gives the power to Collector of a district to initiate a fresh proceeding under the Act, if he was satisfied that a landholder, fraudulently or by misrepresentation has managed to obtain an order from any of his subordinate authority. Similarly, Section 30(4)(ii) provided similar powers to the Commissioner of a Division in case the order had been obtained from the Collector of a district. These were the amendments carried out in the principal act by the Amendment Act, 2016. Simultaneously, by the amending Act, amendment was also affected in Section 13 by adding sub-Section 3 thereof, which provides that an appeal shall be disposed of within the period of six months.

18. Thus, in view of the aforesaid amendments, as noted hereinabove, indubitably, the Collector of a district is empowered to initiate a fresh proceeding under the Act, if he was satisfied that a landholder fraudulently or by misrepresentation has managed to obtained an order from the subordinate authority. Irrespective of repealing of Section 45 (B), which had earlier empowered the State Government to call for and examine records of any proceeding disposed of by a Collector under the Act and direct the case to be reopened. Still the Collector has the power to look into the matter if the circumstances warrants under Section 30(4) (i) of the amended act.

19. It is trite law that Article 226 of the Constitution of India is couched in comprehensive phraseology and it ex facie confers a wide power on the high court to reach injustice wherever it is found. A wide language in describing the nature



*of the power, the purposes for which and the person or authority against whom it can be exercised was designedly used by the Constitution. The High Courts are enable to mould the reliefs to meet the peculiar and complicated requirements. However, the Apex Court has cautioned that there are some limitations implicit in the articles and this power cannot be exercised arbitrarily. The aforesaid observaton has accorded by a three Judge Bench of the Hon'ble Supreme Court in the case of **Dwarka Nath Vs. I. T. Officer, AIR 1996 SC 81.***

*20. In the case of **U. P. State Co-operative Land Development Bank Limited Vs. Chandra Bhan Dubey and Ors, AIR 1999 SC 753**, the Hon'ble Supreme Court placing reliance upon the aforementioned judgment has further held and observed that "Constitution is not a statute. It is a fountainhead of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances."*



21. In view of the amended provisions and the mandate of the law, this Court doesn't find any substance in the submission of the learned Advocate for the State and, as such, it stands rejected."

9. It is not in dispute that against the order dated 11.05.1992 passed by the respondent no. 2 in Revenue Misc. Case No. 49/91-92 whereby the Collector has refused to reopen the case under Section 45(B) of the Act and directed for cancellation of jamabandi, this Court vide its order dated 11.08.1992 in CWJC No. 4686 of 1992 has been pleased to quash the order dated 11.05.1992 and remanded the matter back to the respondent no. 2 for fresh disposal in accordance with law with a direction to maintain *status quo* during the pendency of the matter. The matter was kept pending for more than 20 years and finally it came to be dismissed on account of default and not on merit, the *bona fide* has been shown on the part of the petitioners that they immediately filed restoration application, however, which also came to be dismissed but admittedly after two years; in the meanwhile, the Amendment Act came into force on 01.09.2016. Thus, the petitioner cannot be allowed to be a mute spectator and kept in lurch. It must be noted that the judiciary is respected not on account of its power to legalise injustice on technical ground but because it is capable of



removing injustice and it is expected to do so. [*Vide State of Karnataka Vs. Kappuswamy Gownder; AIR 1987 SC 1353*]

10. In view of the aforesaid discussions noted hereinabove, the writ petition stands allowed. This Court relegates the matter to the Collector-cum-District Magistrate, East Champaran at Motihari, who shall call for the records of the case, reopening the proceeding, hold an enquiry or such an enquiry to be made in presence of all the stake holders and pass an order on the basis of materials available on record, preferably within a period of six months from the date of receipt/production of a copy of this order.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.09.2024
Transmission Date	NA

